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No. 370

In The

Supreme Court of the United States

October Term, 1965

WESLEY HAMONDS, ET AL,

Petitioners,

vs.

CITY OF CORPUS CHRISTI, TEXAS

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals Fifth Circuit.

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CITY OF CORPUS CHRISTI, TEXAS,
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Petition for Writ of Certiorari to
the United States Court of Appeals
Fifth Circuit.

TO THE SUPREME COURT OF THE UNITED STATES:

Now come WESLEY HAMMONDS, The Estate of MARY E. GABRIEL, deceased, VERNE E. HARRIS, O.D. GRIDER, BERNIE L. ARNOLD and JIM J. COFFMAN, a partnership doing business as A & H SPORTING GOODS, LEE CASTLE, COASTAL STORAGE, INC., for themselves and all others, individuals, partnerships and corporations, similarly situated, appellants in cause No. 21, 561 in the UNITED STATES COURT of APPEALS, FIFTH CIRCUIT, and present this their Petition for Writ of Certiorari, in said cause, directed to said UNITED STATES COURT of APPEALS, for review of said cause in this Court and the grounds for granting said Writ are as follows:

1. This suit was filed in the District Court of the United States for the Southern District of Texas, Corpus Christi Division, and was dismissed by that Court on February 7, 1964. The opinion of the District Court appears in 226 Fed. Supp. 456, and a copy of that opinion is attached in the appendix to this petition. The opinion of the United States Court of Appeals, Fifth Circuit, was delivered March 31, 1965, and is not yet reported. A copy of that opinion is attached hereto in the appendix. The Court of Appeals affirmed the judgment of the District Court.

2. The judgment of the United States Court of Appeals was entered on March 31, 1965. The United States Court of Appeals overruled the Appellants' Petition for Rehearing on April 27, 1965. Copies of the judgment of that court and of the order overruling the Petition for Rehearing appear in the appendix to this Petition and the transcript of the record in this case.

3. It is believed that the statutory provision in United States Code Annotated, Title 28, Section 1254, reading:

"Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;",

4. The questions for review are:

(a) Whether the allegations contained in the petitioners complaint filed in the District Court entitled them to make good on their claims that they are being denied rights secured to them under the Section One of the 14th Amendment to the Constitution of the United States, and the laws of the United States hereinafter listed.

(b) Whether the allegations of the petitioners' complaint filed in the United States District Court presented a Federal Question within the jurisdiction of the United

States District Court concerning the validity of the annexation of territory provisions of the Charter of the City of Corpus Christi, Texas, under the first section of the fourteenth Amendment of the Constitution of the United States.

(c) Whether the allegations of the petitioners' complaint filed in the United States District Court concerning the validity of two City Ordinances seeking to annex territory to the City of Corpus Christi, Texas, in July and August, 1961, present a Federal Question within the jurisdiction of the United States District Court under the law and the 14th Amendment to the Constitution of the United States.

(d) Whether the allegations of the petitioners' complaint filed in the United States District Court concerning the validity of two City Ordinances seeking to annex territory to the City of Corpus Christi, Texas, in July, August and September, 1962, present a Federal Question within the jurisdiction of the United States District Court under the law and the 14th Amendment to the Constitution of the United States.

5. The Constitution of the United States, 14th Amendment, Section 1, provides: (U. S. C. A. Constitution Amendment Fourteen)

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42, Section 1981, U. S. C. A., provides:

"All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and executions of every kind, and to no other."

Title 42, Section 1983, U. S. C. A., provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 28, Section 1343, U. S. C. A., provides:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

STATEMENT OF THE CASE.

This suit is an attack upon the constitutionality and validity of a portion of Article I, Section 2, Charter of the City of Corpus Christi, Texas (R. 11-12) (and appendix), and the constitutionality and validity of Ordinances Numbered 6206 (R. 15, 37-50), 6242 (R. 10, 51-59), 6586 (R. 16-20, 59-82) and 6636 (R. 16-22, 82-104), all with reference to the alleged annexation of a total of more than 40,000 acres of territory. The first two Ordinances being passed in 1961, and the last two in 1962. The complaint sets out that the action is under the *Fourteenth Amendment to the Constitution of the United States, Section 1* and under *Title 42, Section 1981, United States Code Annotated.* The parties are called "appellants" and "City".

The facts, as alleged, are: On July 12, 1961, the appellee, herein called City, attempted to annex some 15,000 acres by passing Ordinance No. 6206 calling an election, for city voters only, to be held on August 5, 1961, only within the then city limits. On August 5, 1961, the City Council passed Ordinance No. 6242, as an emergency, annexing said area as described in said ordinances. On October 1, 1963. the City commenced to exercise municipal authority over the area and the officers, agents and representatives of the City have since been, and are now, interfering with the rights of appellants and all other inhabitants and property owners of the area by abridging the privileges and immunities thereof, and are depriving the appellants, and all other persons similarly situated of their liberty and

property without due process of law, and are denying the appellants, and all others within said area, as well as those within the jurisdiction of the City, the equal protection of the laws, contrary to the provisions of *Section 1, Fourteenth Amendment to the Constitution of the United States* and contrary to the provisions of *Title 42, Section 1981, U. S. C. A.* (R. 10-11). The attempted annexation was exercised under the authority of *Article I, Section 2, Charter of Corpus Christi* (R. 11-12), as provided by the 4th method set out therein. The portion of the Charter in question is copied in the appendix hereto and appears in R. 11-12.

Said provisions of the Charter are void as in violation of *Section 1, 14th Amendment of the Constitution of the United States* since annexation of territory may be had without any hearing by the Council, or any other body, on (a) whether the petition for annexation is signed by not less than ten per cent of the qualified voters residing in the area proposed to be annexed; (b) whether the territory is adjacent to the City; (c) whether the area is suitable for City purposes; (d) whether the City can, within the reasonable foreseeable future, furnish said proposed area with substantial municipal services; (e) whether the area includes any part of a water district which has an outstanding indebtedness and whether it would be practicable or feasible for the City to annex any part of such a water district and assume its indebtedness and obligations; (f) or to consider any and all other questions or matters pertaining to said annexation (R. 12).

The complaint then alleges many facts with reference to the sufficiency of the petition presented seeking the annexation and the fact that said petition was never presented to the Council for consideration but was acted upon anyway (R. 13-15). Ordinance No. 6206 was passed without the Council complying with *Article VI, Sections 3 and 3a, Constitution of Texas,* and *Article 1182a, Vernon's Annotated Civil Statutes of Texas, Article VII, Section 10, Charter for Corpus Christi,* WERE BOTH DISREGARDED IN PASSING SAID ORDINANCE (R. appendix) (R. 15) and are void.

There was no due process of law in the said annexation. The exercise of municipal authority by the City over the area is an abridgment of the privileges and immunities of the citizens of the area involved and is depriving the inhabitants and property owners of the territory of their liberty and property without due process of the laws, and is denying them of equal protection of the laws, especially since there are inhabitants in excluded territory adjacent to the City and between the City and Flour Bluff, who are exempted from City municipal authority, regulations and taxes, when such exempted property and inhabitants are situated exactly, or similar to, the inhabitants of Flour Bluff, the annexed area which is 2.2 miles from the City limits (R. 16). It is alleged that the area proposed to be annexed is not adjacent to the City but is 2.2 miles from the City limits (R. 13), and that some 1500 acres of like area were arbitrarily excluded from the annexation (R. 14).

As to the attempted annexation of 1962, it is alleged to be the fact that: On August 1, 1962, seeking to annex some 40,000 acres of territory, including the same area described in Ordinance No. 6206, the City passed Ordinance No. 6585 calling an election for September 15, 1962, held only within the City, excluding Flour Bluff, which carried in favor of annexation. On September 19, 1962, the City Council passed Ordinance No. 6636 annexing the said 40,000 acres as a part of the City. In these two ordinances the outside boundaries actually included about 51,000 acres of land. In writing the boundaries of this area the City made two descriptions, that is two tracts were described but the descriptions joined, so about 11,000 acres of territory were surrounded within the annexed area. The purpose was to exclude the 11,000 acres with its inhabitants, businesses and improvements from City municipal controls and taxation. This area has a taxing valuation of over $18,000,000.00. To make sure of the exclusion of the 11,000 acres each ordinance contains this provision: "Those areas which lie between Tract Numbered One and Tract Numbered Two and which are not included within the boundary of either of said tracts are specifically excluded and do not lie within the proposed City Limits." Like putting a book in a desk drawer and then saying that the book is not in the desk (R. 16-17 and Ord. 6586 R. 59-82, Ord. 6636 R. 82-104).

By Article I, Section 2, Charter for Corpus Christi, the annexation was "at the will of the Council". Said provisions of the Charter are alleged to be void as being in

violation of *Section 1, 14th Amendment to United States Constitution* since under that provision of the Charter annexation may be had at the will of the Council without any hearing before the Council, or any other investigating body or person to determine whether, (a) the area proposed to be annexed is adjacent to the City; (b) the territory is suitable for City purposes; (c) the City can, within the reasonable foreseeable future, furnish the area with substantial municipal services; (d) the territory includes a part of a water district which has outstanding indebtedness and whether it would be practicable and feasible for the City to annex all or any part of such district and assume its obligations in proportion to the area annexed; and (e) to consider any and all other questions or matters connected with annexation. The provisions of the Charter being void all ordinances passed under such section are void (R. 17-18)

In September, 1962, the City commenced to exercise municipal authority over said two described tracts (excluding the Flour Bluff area in which such authority was commenced October 1, 1963) and have since, and are now, interfering with the rights, privileges and immunities of appellants and all other inhabitants with the exception of the 11,000 acres excluded from annexation, and the City, its servants and agents are depriving the appellants, and all others similarly situated, excepting said favored 11,000 acre area, of their liberty and property without due process of law, and are denying the appellants, and all others so situated, within the two described annexed tracts

as well as all persons within the original City limits, the equal protection of the laws as compared with the inhabitants and property owners within the excluded 11,000 acres that is actually within the annexed area, all contrary to the provisions of *Section 1, 14th Amendment to the United States Constitution* and contrary to the provisions of *Title 42, Section 1981, U. S. C. A.* (R. 18-19).

Ninety per cent of the area annexed is farm land and will not be necessary for future development of the City within any near foreseeable future, to say the next 25 to 40 years. The two annexed tracts are the same kind, type and character of lands, inhabitants and businesses as that within the 11,000 acre excluded area. There are in fact two tracts composing the 11,000 acre excluded acre and by excluding said area the City Council discriminated favorably to such areas by excluding same from city taxes and regulations. In excluding said 11,000 acres the Council discriminated in favor of the then Mayor, Ben F. McDonald, who was, and now is, financially interested in a business, Grain, Inc., which owns and operates a business within the excluded area; and discriminated in favor of M. P. Maldonado, City Commissioner, who then owned and operated property and a business within the excluded area; and discriminated in favor of W. J. Roberts, City Commissioner, who then owned and operated property and a business within the excluded area; and discriminated in favor of James H. Young, City Commissioner, whose family or relatives own and operate the Eastern Seed Co. within the excluded area, and discriminated in favor of

other persons having property and businesses within the excluded area by the arbitrary, unreasonable and deliberate exclusion of said area from the City, its regulations and taxes when said 11,000 acres of land was, and is, more suitable for annexation to the City than was 90% of the territory annexed at the time; therefore, the ordinances numbered 6586 and 6636 were and are void, in that, said ordinances are in violation of *Section 1, 14th Amendment to the Constitution of the United States*, and violate *Title 42, Section 1981, etc., U. S. C. A.* (R. 19-20).

There are allegations with reference to the annexation being invoked without following certain provisions of the Charter and contrary to the provisions of *Article 1182a, V. A. C. S. of Texas*, which acts are charged as violating due process of law. It is also alleged that *Article 6, Sections 3 and 3a, Texas Constitution*, were not followed in the election for annexation, which is not due process of law (R. 20-23). These allegations are not waived but are not fully copied for brevity.

The appellants say further: *Article 1182a, V. A. C. S. of Texas*, forbids the collection of taxes from property owners within the annexed area by the City, even if the area is legally annexed, until the City has either paid the Water District taxes or bonded indebtedness for each tax year, nevertheless the City is collecting, or attempting to collect the 1963 taxes in the alleged annexed area without having complied with *Article 1182a, V. A. C. S.* (R. 23-24).

In assessing and collecting taxes the City is governed

by *Chapter 7, Title 122, Vernon's Annotated Civil Statutes of Texas.* When the suit was filed the City was attempting to collect the 1963 taxes in the annexed area without the City or its Tax Assessor-Collector having complied with any provision of said tax laws of Texas. The acts required are alleged but not repeated here. One of the requirements of the law is that a Board of Equalization pass upon and equalize the tax valuations placed on the property by the Tax Assessor, or adjust the differences in the values placed on the property by the owner and the Tax Assessor. The Tax Assessor has not approached the taxpayers, including these appellants, for an assessment of his or their property for 1963. The taxes have been levied and collection is being attempted and forced without the taxpayer and property owner having been given an opportunity to render his property for taxes, or given an opportunity to appear before a Board of Equalization as to the value of his property. The City has ordered and directed the Tax Assessor and Collector of the City to assess taxes arbitrarily as to description, ownership and value and said Tax Assessor has arbitrarily assessed property at values of from ten per cent on to one hundred per cent in excess of the market value or intrinsic or actual value of said property. The City is attempting to collect, and in some cases collecting, taxes so excessive and exorbitant that to permit it to do so will allow confiscation of the property of these appellants and all other persons similarly situated (R. 24-25).

For the aid to the proper understanding of the acts of

the City in the 1962 annexation and the excluding of the 11,000 acres of land, we have attached in the appendix a plat, used by the City in its annexation promotion, showing in heavy black the old or original City limits. The arrow in the lower left corner shows the direction North. The gray portion shows the 1962 annexed area. The white on which we have written "Annexation Excluded This Area Within the City Limits" and at the extreme right of the map shows the two excluded tracts totaling about 11,000 acres. The narrow strip North of the area designated as excluded is part of the annexed lands. That narrow strip of land and water is the Northwest boundary of Corpus Christi as designated in the annexation ordinances and is such boundary of the two excluded areas making the 11,000 acres excluded.

SUMMARY

I. The Charter of Corpus Christi, ARTICLE I, Section 2, ANNEXATION, a portion of which is copied in the Appendix hereto, being the portion under which the alleged annexations were made, did not, and does not, afford to persons affected by the annexation any notice or hearing on the proposed annexation of territory involved in this suit and was, and is, therefore obnoxious to Section 1, Fourteenth Amendment to the Constitution of the United States, and void.

II. Said provisions of the Charter of Corpus Christi do not authorize the annexation of all or any part of Nueces County Water Control and Improvement District No. 2, a Water District with outstanding indebtedness at the time, and any Appellant in this suit who owns property subject to taxation within said Water District, a portion of which is so annexed, has suffered the taking of his property through additional taxation and regulations without due process of law, in violation of Section 1, Fourteenth Amendment of the Constitution of the United States.

III. The Legislature of the State of Texas, in passing ARTICLE 1182a, Vernon's Annotated Civil Statutes of Texas, preempted the manner and form of annexation of all or any part of Nueces County Water Control and Improvement No. 2, and in passing Ordinance 6206 calling the election of August 5, 1961, (R 37-50) the City Council having not complied with said statute the said election was void for not affording the appellants due process of law in violation of Section 1, Fourteenth Amendment to the Constitution of the United States, in depriving them of their right to vote on the annexation.

IV. In passing Ordinance 6206 calling the election of August 5, 1961, the City Council excluded territory

along either side of a narrow neck of land from the then City Limits to the "FLOUR BLUFF" area, a distance of 2.2 miles, and did, by so doing, discriminate in favor of said excluded area and against the "FLOUR BLUFF" area in violation of the equal protection of the law provisions of the Fourteenth Amendment to the Constitution of the United States.

V. In passing Ordinance 6206 calling the election for August 5, 1961, the City Council did not afford these Appellants, or any other person or persons affected by the annexation, notice or hearing on the proposed annexation, therefore the ordinance is void for not having been passed in due process of law, in violation of Section I, Fourteenth Amendment of the Constitution of the United States.

VI. Ordinance 6242 (R 51-59) passed on August 5, 1961, annexing the "FLOUR BLUFF" area is void (Said ordinance being based on the election called for in Ordinance 6206) for each of the aforesaid given reasons.

VII. Ordinance 6586 (R 59-82) passed on July 18, 1962, annexing some 40,000 acres of territory, is void for each of the reasons stated in I, II, III and V above which are adopted here as applying to said ordinance, calling an election.

VIII. In passing Ordinance 6586 calling the election for September 15, 1962, seeking to authorize the annexation of some 40,000 acres of territory to Corpus Christi the City Council actually inclosed some 51,000 acres of land within the proposed area to be annexed and then by special provision within the Ordinance excluded some 11,000 acres of land that is within said described annexed area thereby excluding said 11,000 acres from taxation and regulations of the City, and

did, by so soing, discriminate against these appellants, and all others similarly situated, in favor of the Mayor and members of the City Council, and others, owners of property and lands within said excluded area and failed to afford these appellants, and others similarly situated, equal protection of the laws and regulations as afforded those so excluded, in violation of the first section of the Fourteenth Amendment of the Constitution of the United States, and the equal protection of the laws of the United States.

IX. Ordinance 6636 (R 82-104) passed on September 19, 1962 annexing the said 40,000 acre territory is void (Said ordinances being based on the election called for in Ordinance 6586) for each of the reasons contained in the foregoing paragraphs I to VIII.

X. The assessment, levy and attempted collection of taxes for the year 1963 is in violation of the due process of law clause of the Fourteenth Amendment to the Constitution of the United States since the Charter Provisions of the City of Corpus Christi, and the laws of Texas, on assessment, levy and collections of taxes were not complied with in any respect, including the failure to afford these appellants a hearing before a Board of Equalization after notice, and amounts to a taking of their property without due process of law.

XI. These appellants, and those similarly situated, were not afforded an opportunity to be heard on the proposed annexation, on either occasion involved, therefore, the enforcement of City regulations on work, labor, operations of a business or profession, zoning etc., amounts to a taking of their property without due process of law in violation of the first section of the Fourteenth Amendment to the Constitution of the United States and

acts of Congress quoted herein.

XII. In holding that "The only limitation under the Texas law on the power of a home rule city like appellee to annex additional territory is that the territory shall be adjacent to the city and not included within the boundaries of any other municipality." is in error, for, the rule as repeatedly stated by the Supreme Court of Texas is:

> "Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation not its officers can do any act, or make any contract***not authorized therely, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void."

XIII. The question is whether the allegations contained in the appellants' complaint entitle them to make good on their claims that they are being denied equal protection of the laws and have been, are being and will continue to be deprived of due process of the laws guaranteed them by the Fourteenth Amendment to the Constitution of the United States. The trial Court and the Court of Appeals have denied these appellants their day in Court to have those questions heard which is error.

XIV. In annexing part of Nueces County Water Improvement District No. 2, and part of Nueces County Fresh Water Supply District No. 1, both municipal corporations created under the laws of Texas, the City took part of the physical assets of each district without paying either district for the properties so taken and without complying with the provisions of Article VI, Sections 3 and 3a, Constitution of Texas, and complying with Article VII, Section 10, Charter of Corpus Christi, and did not comply with Article IX, Section 31, City Charter, or complying with Article 1182a, Vernon's Annotated Civil Statutes of Texas. Said properties were paid for by tax payers within said districts, including these petitioners, and in so taking of said properties of said municipal corporations without compensating them therefor and without complying with the said laws the City viloated the just compensation for property and the due process of law provisions of the Constitution of the United States. (R. 15, 20-23)

XV. This is a class suit brought on behalf of the petitioners and all other inhabitants and property owners of the territory annexed. (R. 10, 32)

The foregoing XV paragraphs together with the following authorities are submitted together and show jurindiction of the Federal Courts over the subject matter of this suit.

FEDERAL COURT JURISDICTION

The constitutional questions are set out in the foregoing statement over which the Federal Courts have jurisdiction. It cannot be doubted that it is the purpose of the pleaders to make violation of these Constitutional provisions the basis of this suit. Before deciding that there is jurisdiction, the district court must look to the way the complaint is drawn to see if it is

drawn so as to claim a right to recover under the Constitution and laws of the United States. BELL EL AL., v HOOD ET AL., 327 U.S. 678, 66 S. Ct. 773, 775. This Supreme Court has held many times that "whether the plaintiff has any rights that the city is bound to respect can be decided only by taking jurisdiction of the case.", and that it is necessary for the district court to deal with the merits. MOSHER v CITY OF PHOENIX, (two cases) 287 U.S. 29, 53, S. Ct. 67, 68; CUYAHOGA RIVER COMPANY v AKRON, 240 U.S. 462, 36 S. Ct. 402, 60 L. Ed. 742. When; as in this case, a Federal Court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take jurisdiction. The right of these petitioners to choose the Federal Court cannot properly be denied. RE METROPOLITAN R. RECEIVER, 208 U.S. 90-110; ATLANTIC COAST LINE R. CO. v 211 U.S. Ct. 210, 29 S. Ct. 67; WILCOX ET AL. v. CONSOLIDATED GAS COMPANY OF NEW YORK, and two other cases, 212 U.S. 19, 29 S. Ct. 192, 195.

In YICK WO v. HOPKINS, 118 U.S. 356, 30 L. Ed. 220, 6 S. Ct. 1064, and HOME TELEPHONE and TELEGRAPH COMPANY v. CITY OF LOS ANGELES, 227 U.S. 278, 33 S. Ct. 312, and many other cases, the enforcement of certain City ordinances have been prohibited on the ground that they were within the reach of the 14th Amendment to the Constitution of the United States.

"Equal protection of the laws means equal exemption with others of the same class from all charges and burdens of every kind...." COTTON ET AL. v. GODARD, ATTORNEY GENERAL, 183 U.S. 79, 22 S. Ct. 30, 42. In exempting the 11,000 acres of area that is in the

City of Corpus Christi the said City discriminated in favor of the Mayor and three City Commissioners and against these Petitioners and others similarly situated by not giving them the same protection from taxes and regulations. All excluded lands and inhabitants within the 11,000 acres are protected against City taxes and regulations, charges and burdens of every kind inposed by the City ordinances. These petitioners, and others, who were annexed by the same ordinances that exempted the 11,000 acres that is also within the City, are charged with the taxes, "charges and burdens of every kind." That is not "equal protection."

It is well settled that the determination of a federal question by a state court is not binding on the Federal Courts. Many cases directly in point are cited in SMITH v. ALLWRIGHT, 321 U.S. 649, 64 S. Ct. 757, 764, a case from Texas. Federal Courts for themselves must appraise the facts and it is only by the performance of this obligation that a final and uniform interpretation can be given to the Constitution, the 'supreme Law of the Land.' NIXON v. CONDON, 286 U.S. 73, 88, 52 S. Ct. 484, 76 L. Ed. 984, 88 A.L.R. 458; SMITH v. ALLWRIGHT, SUPRA, and cases there cited.

Where, as here, Constitutional rights are involved, it is the duty of the Federal Courts to secure their protection even though state courts may have failed to do so in an analogous situation. GOLIMAN v. POSTAL TELEGRAPH, 52 F. Supp. 763, D.C. Del. 1944. In this or any other case the Federal Courts cannot allow themselves to be completely bound by state court determination of any issue essential to the decision of the petitioners claims of federal rights, in view of the fact that federal law could then be frustrated by distorted

facts found by the state court, as has been done, in other cases. STEIN v. PEOPLE OF STATE OF N.Y., 73S. Ct. 1077, 346 U.S. 156, 97 L. Ed. 1522; COOPER v. N.Y., 346 U.S. 842, 74 S. Ct. 13, 98 L. Ed. 362. The so called claims of res judicata advanced in this case is an affirmative defense that has not been established. This is an entirely new and different law suit. In MERCOID CORPORATION v. MID-CONTINENTAL CO., 320 U.S. 661, 671, 64 S. Ct. 268, 274, 88 L. Ed. 376, this Court says:

> "Where the second cause of action between the parties is upon a different claim the prior judgment is res judicata not as to issues which might have been tendered but 'only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered."

The parties to this suit were not parties to any other suit that is mentioned in the opinions of the trial Court or Court of Appeals. The issues are not the same as in those cases. The attorney is the same but there is no law forbidding such.

The United States Courts are the peculiar guardians of the Constitution of the United States. The decisions of even the highest state courts are not binding upon Federal Courts concerning questions arising under the United States Constitution. HOWARD v. LADNER, 116 F. Supp. 783, 792-793, by a three judge court.

If there were no more allegations in this case other than the allegations by the petitioners that tax as-

sessments on their, and other persons property, were, and are, and will continue to be, arbitrary and discriminatory, such allegations necessarily involve construction and interpretation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution. HEMSLEY v. CITY OF DETROIT, D.C. MICH. 205 F. Supp. 793, affirmed 320 F. 2d 476.

It is alleged that the City is discriminating against these petitioners and others in the matter of taxation and that such discrimination will continue if not prevented by this suit. In CONN v. RINGER, 32 F. 2d 639, the Sixth Circuit Court of Appeals, it is said:

> "The first question challenging attention is that of jurisdiction of the federal court as such--the existence of a federal question. ***Even though the plaintiffs were barred from raising this constitutional question as to the years 1922 and 1923, upon principles of res judicata, the matter of conceded discrimination thereafter in the taxation of real estate would remain. Does this present a real and substantial question under the Constitution of the United States? We are of the opinion that it does. Cummings v. Merchants National Bank, 101 U.S. 153, 25 L. Ed 903; Greene v. Louisville & Interurban R. Co., 244 U.S. 499 .516, 37 S. Ct. 673, 61 L. Ed. 1280. (And many other cited cases).

In BOHLER COUNTY TAX ASSESSOR & COLLECTOR, ET AL. v. CALLAWAY, 267 U.S. 479, 45 S. Ct. 431, in an appeal from the District Court, Georgia in-

volving the application of the U.S. Constitution to taxing matters, the question of jurisdiction was involved as follows:

> "Had the Federal Court jurisdiction to entertain the bill and enjoin the enforcement of the executions issued upon the assessments? ***"

In answering that question this Court said:

> "****It is well settled that if the administration of the tax laws of the state is shown to result in an intentional and systematic discrimination against a complainant by a bill in a federal court, the court may grant relief by injunction under the state law without deciding the federal constitutional question upon which jurisdiction of the bill is based."

In RAYMOND COUNTY TREASURER, ET AL. v. CHICAGO UNION TRACTION CO., 207 U.S. 20, 28 S. Ct. 7, the question was the jurisdiction of the Federal District Court in the enjoining of collection of taxes assessed without action of the Board of Equalization (the same question is in this case) and notice and hearing, it being alleged, as herein, that the assessment was in violation of the 14th Amendment to the Constitution of the United States, and if permitted to stand or enforced, would result in the taking of the appellee's property without due process of law, and in denying to it equal protection of the laws.

(The same allegations are in this case) In sustaining the jurisdiction of the District Court this Court said; (28 S. Ct. 12)

> "**** The Federal Courts throughout the country have frequently reviewed the action of taxing bodies when, under the facts, such action was in effect the action of the state, and therefore reviewable by the Federal Courts by virtue of the provisions of the Amendment in question."

Inasmuch as the rights which some, if not all, of the petitioners seek to protect bring this case within the ambit of the Constitutional Amendment and Congressional Acts before quoted, it is not necessary for them to allege or prove any jurisdictional amount. AMERICAN FEDERATION OF LABOR v. WATSON, 327 U.S. 582, 590; ADAMS v. CITY OF PARK RIDGE, 293 F. 2d 585, 589.

It is alleged in the complaint that the actions of the City in instituting the annexations were arbitrary, without hearing or due consideration; that the excluding of the territory that is in fact within the city limits, and excluding of property that belonged to the Mayor and members of the City Council, was arbitrary, discriminating and contrary to the due process of law and equal protection of the law provisions of the 14th Amendment to the Constitution of the United States; also it is alleged that the taxes were, and are, arbitrary, assessed without equalization and in excess as much as 90 per cent above actual market value.

In LONDONER ET AL. v. CITY and COUNTY OF DENVER, 210 U.S. 373, 28 S. Ct. 708, this Court says:

"If it is enough that, under such circumstances, an opportunity is given to submit in writing all objections to and complaints of the tax to the board, then there was a hearing afforded in the case at bar. But we think that something more than that, even in proceedings for taxation, is required by due process of law. Many requirements essential in strictly judicial proceedings may be dispensed with in proceedings of this nature. But even here a hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument, however brief, and if need be, by proof, however informal. (Cases are cited)

"It is apparent that such a hearing was denied to plaintiffs in error. The denial was by the city council, which, while acting as a board of equalization, represents the state. Raymond v. Chicago Union Traction Co., 207 U.S. 20, ante 7, 28 S. Ct. 7. The assessment was therefore void, and plaintiffs in error were entitled to decree discharging their lands from a lien on account of it."

It is submitted that the foregoing shows that the Federal Court has jurisdiction of the Constitutional questions involved in this suit. The District Court erred in dismissing the suit and the Circuit Court of Appeals erred in affirming the District Court judgment.

We say that the writ of certiorari should be granted under Rule 19, Section 1, Paragraph (b) of PART V, SUPREME COURT RULES. The United States Court of Appeals, Fifth Circuit, in this case, has decided a Federal question in a way in conflict with applicable decisions of this, the Supreme Court of the United States. This Court in HARTFORD STEAM BOILER INSPECTION and INSURANCE COMPANY ET AL. v. HARRISON, INSURANCE COMMISSIONER, 301 U.S. 459, 57 S. Ct. 838, 840, says:

> "(2,3) Despite the broad range of the state's discretion, it has a limit which must be maintained if the constitutional safeguard is not to be overthrown. Discriminations are not to be supported by mere fanciful conjecture. Borden's Company v. Baldwin, 293 U.S. 194, 209, 55 S. Ct. 187, 79 L. Ed. 281. They cannot stand as reasonable if they offend the plain standards of common sense."

This court in GOMILLION ET AL. v. LIGHTFOOT, as MAYOR OF THE CITY OF TUSKEGEE, ET AL., 364 U.S. 339, 81 S. Ct. 125, 127, says:

> "*** The respondents invoke generalities expressing the State's unrestricted power-- unlimited, that is, by the United States Constitution--to establish, destroy or reorganize by contraction or expansion its political subdivisions, to wit, cities, counties, and other local units. We freely recog-

nize the breadth and importance of this aspect of the State's political power. To exalt this power into an absolute is to misconceive the reach and rule of this Court's decision in the leading case of Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S..Ct. 40, 52 L. Ed. 151, and related cases relied upon by respondents.***

"*** Thus a correct reading of the seemingly unconfined dicta of Hunter and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases. (81 S. Ct. 128)***

"This line of authority conclusively shows that the Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution.***"

The District Court and the Court of Appeals rendered their decisions on the Hunter case which does not apply to this case. The Court of Appeals also cites INTERNATIONAL HARVESTER CO v. KANSAS CITY, 388 F. 2d. 35, as authority for its holding in this case. The

primary attack in that case was upon an ordinance claimed to violate State laws. Here we say that the City Charter and Ordinances violate the United States Constitution as well as Federal laws. In the INTERNATIONAL HARVESTER CASE, supra, the court says:

> "And certain it is that a state cannot legislate upon even a matter of complete state interest in such a manner as to abuse a federal constitutional right. Gormellion v. Lightfoot, 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110."

We submit that the holding in this case announced by the Court of Appeals is contrary to the intention and meaning of the cases above submitted and cited. The opinion of the Court of Appeals in this case limits and restricts the previous holdings of this Court and has so far departed from the accepted and usual announcements of the laws and Constitutional limitations made by this Court as to call for the exercise of this, the Supreme Court of the United States, of its power of supervision. As said in the GORMELLION case by this court:

> "*** The sole question is whether the allegations entitle them (petitioners) to make good on their claim that they are being denied rights under the United States Constitution.***" (81 S. Ct. 127)

WHEREFORE, petitioners pray that this, the Supreme Court of the United States, grant this Petition for Writ of Certiorari and that the Court issue the Writ as is authorized by law, and further that the case be set for hearing on the merits, and be so heard, and they pray for general

relief in law and equity, as they may show themselves entitled.

Respectfully submitted,

Sidney P. Chandler

Sidney P. Chandler
P.O. Box 6216
Corpus Christi, Texas 78411
Attorney for Petitioners

CERTIFICATE

Copies of the foregoing Petition for Writ of Certiorari have been deposited in the United States Mail in a proper stamped envelope addressed to Hon. L.M. Singer, City Hall, Corpus Christi, Texas, certified with return receipt demanded, he being one of the attorneys of record for the Respondent, City of Corpus Christi, Texas.

Sidney P. Chandler

Sidney P. Chandler
P.O. Box 6216
Corpus Christi, Texas 78411
Attorney for Petitioners

APPENDIX.

The Constitution of Texas, Article VI, Sections 3 and 3a.

Section 3. Municipal elections; qualifications of voters.

All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

Section 3a. Bond issues; loans of credit; expenditures; assumption of debts; qualifications of voters.

When an election is held by any county, or any number of counties, or any political sub-division of the State, or any political sub-division of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political subdivision, district, city, town or village where such election is held, and who have duly rendered

the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence.

Vernon's Annotated Civil Statutes of Texas.

Art. 1182a. Annexation of additional territory

ELECTION

Section 1. Whenever the City Commission of any City within this State, acting under and by virtue of any Charter adopted under Home Rule Amendment Article 11, Section 5, of the Constitution of this State, shall initiate or order an election for the extension of the territorial limits of said city, to be submitted to the legally qualified property tax paying voters residing within the territorial limits of said city, to determine whether or not the adjacent territory desired to be annexed shall be included within the territorial limits of said city, said City Commissioners shall at the same time order an election to be held at some convenient place within said city limits, so that the legally qualified property tax paying voters residing in the territory contiguous to said city and proposed to be annexed, may appear and cast their vote for the purpose of determining whether a majority of the legally qualified property tax paying voters residing in said territory proposed to be annexed, favor the annexation of said territory proposed to be annexed.

BALLOTS FOR ELECTION

Sec. 2. Whenever an election for the annexation of additional territory is held in accordance with the provisions of the foregoing section, said City Commissioners,

when ordering such election for the annexation of said territory, shall prepare for the legally qualified property tax paying voters, printed ballots containing the following propositions to be voted on thereat:

"For annexation of additional territory and assumption by the city of all bonded indebtedness and flat rates owing to such water control and improvement district on the territory to be annexed and the levying and collecting of a tax on all property within the city limits sufficient to pay off and discharge said bonded indebtedness and flat rates."

"Against annexation of additional territory and assumption by the city of all bonded indebtedness and flat rates owing to such water control and improvement district on the territory to be annexed and the levying and collecting of a tax on all property within the city limits sufficient to pay off and discharge said bonded indebtedness and flat rates."

ASSUMPTION OF INDEBTEDNESS OF ANNEXED TERRITORY

Sec. 3. If, at any election to be held under the provisions hereof, a majority of the legally qualified tax paying voters residing within the territorial limits of such city, and those residing within the territorial limits proposed to be annexed, shall each vote in favor of the annexation of such additional territory, said city shall thereby assume all of said bonded indebtedness and flat rates on the territory thus annexed and due such Irrigation District, Water Improvement District or Water Control and Improvement District, or either of them, and

shall from thence forth out of the taxes collected on the territory thus annexed pay to said Irrigation District, Water Improvement District or Water Control and Improvement District, said bonded indebtedness and flat rates, owing to such district, or either of them, as same become due and payable, and no city thus annexing such territory shall be entitled to collect any taxes due it from the property owners within the territory annexed until said City shall pay such bonded indebtedness and flat rates, for the current year same become due and payable, and present to said property owner a receipt showing that said City has paid the same.

The order of election must give the metes and bounds of the territory to be annexed, and said metes and bounds shall be include[1] and made a part of the ordinance calling for the election.

The election herein provided for shall be ordered by the City Commissioners and the returns canvassed and the results declared as is provided by law for other elections pertaining to said City.

Said ordinance for the election must provide for separate elections and must be issued and public notice given thereof as in other city elections, and provided further that if a majority of the legally qualified property tax paying voters residing within the territorial limits of said city or if a majority of the legally qualified property tax paying voters residing within the territory desired to be annexed shall not be in favor of such annexations then such annexations shall not be made.

1. Probably should read "included."

POWERS ADDITIONAL TO CHARTER PROVISIONS

Sec. 4. Provided further, however, that nothing in this Act shall be held or construed to repeal or nullify any charter provision of any city of over one hundred thousand inhabitants according to the last United States census, operating under Article 11, Section 5 of the Constitution providing for the annexation of additional territory by ordinance, but shall be construed as an additional power and cumulative of the said charter provisions. Acts 1929, 41st Leg., p. 251, ch. 110.

An Act to Grant a Charter for the City of Corpus Christi, in Nueces County, Texas.

Validating the Acts of the Said City As It Heretofore Existed. Repealing All Laws and Parts of Laws in Conflict Herewith. and Declaring an Emergency. Be It Enacted by the Legislature of the State of Texas:

ARTICLE I

Section 1. INCORPORATION. The Inhabitants of the City of Corpus Christi, Texas, within its corporate limits as established by Chapter 33, Pages 304-351, Special Laws of Texas, 1909, 31st Legislature, Regular Session, and as established or extended by the Charter of the City of Corpus Christi, Texas, as heretofore or hereafter amended, and as established or extended by ordinances of the City of Corpus Christi, Texas, heretofore or hereafter enacted, be and are hereby constituted a body politic and corporate, in perpetuity, under the name "CITY OF CORPUS CHRISTI," hereinafter referred to as the "City," with such powers, privileges, rights, duties and immunities as are herein provided. (Amendment adopted May 25, 1955).

Section 2. ANNEXATION.* The City of Corpus Christi is empowered to annex additional territory adjoining or lying adjacent to the City in the manner set forth in either of the following sub-sections (a), (b), or (c).

(a) The question of annexation of a given territory may be submitted to the qualified voters of the City at an election duly called for such purpose; and if a majority of such qualified voters voting at such election favor the annexation of such territory, the same shall be annexed by ordinance of the City Council; and when any additional territory has been so annexed, the same shall be a part of the City of Corpus Christi and the property therein shall bear its pro rata part of the taxes levied by the City, and the inhabitants thereof shall be entitled to the rights and privileges of all the citizens, and shall be bound by the acts, ordinances, resolutions and regulations of the City. Such question of annexation of any given territory may be submitted to the qualified voters of the City at any time upon the majority vote of the members of the Council. The question of annexation of any given territory may come before the Council for consideration upon either (1) the will of the Council, or (2) the written recommendation of the Zoning and Planning Commission of the City, or (3) petition signed by not less than 1,500 qualified voters of the City, or (4) petition signed by not less than 10% of the qualified voters residing in the territory proposed to be annexed.

. . . . . .

MEMORANDUM AND ORDER.

Filed Feb. 7, 1964.

(Title Omitted.)

In this cause the Plaintiffs are suing the City of Corpus Christi, Texas, as Defendant, asking that two annexation ordinances of the Defendant be held void, and asking for an injunction against said City from asserting any control over the alleged annexed territory, including, but not limited to, its attempt to collect taxes.

It appears that Plaintiffs are not only bringing this action in behalf of themselves, but also in behalf of all other persons similarly situated.

Plaintiffs assert that this Court has jurisdiction of their cause of action under Section 1 of the Fourteenth Amendment of the United States Constitution, and Title 42, Section 1981, United States Code Annotated.

The City of Corpus Christi has filed its motion to dismiss this action, and that is the motion that is before the Court at this time.

The City of Corpus Christi is a home rule city and operates under a city charter under Article II, Section 5, of the Constitution of the State of Texas.

A city of over 5,000 inhabitants, such as Corpus Christi, Texas, has the power to adopt or amend its charter subject to such limitations as may be prescribed by the Legislature. Among the enumerated powes granted to such home rule cities by the Legislature is "the power to fix the boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, according to such rules as may be provided by said charter." Vernon's Annotated Civil Statutes, Art. 1175, subd. 2.

Texas Courts have held that the only limitation fixed by the Legislature on the power of a home rule city to annex additional territory is that the territory shall be adjacent to the city and not included within the boundaries of any other municipality. City of Houston v. State ex rel. City of West University Place, 142 Tex. 190, 176 SW 2d 928; State ex rel. Pan American Production Co. v. Texas City, 157 Tex. 450, 303 SW 2d 780 (1957), Reh. den.

The City of Corpus Christi has provided the different modes of annexing territory to the city, in Article 1, Sec. 2, of its city charter.1

1. "Section 2. Annexation. * The City of Corpus Christi is empowered to annex additional territory adjoining or lying adjacent to the City in the manner set forth in either of the following subsections (a), (b), or (c).

Acting under said city charter provisions, the City of Corpus Christi passed two annexation ordinances which are the ones under attack here. These two ordinances have already been under attack in the State Courts, and the validity of said annexation ordinances has been upheld.

(a) The question of annexation of a given territory may be submitted to the qualified voters of the City at an election duly called for such purpose; and if a majority of such qualified voters voting at such election favor the annexation of such territory, the same shall be annexed by ordinance of the City Council; and when any additional territory has been so annexed, the same shall be a part of the City of Corpus Christi and the property therein shall bear its pro rata part of the taxes levied by the City, and the inhabitants thereof shall be entitled to the rights and privileges of all the citizens, and shall be bound by the acts, ordinances, resolutions and regulations of the City. Such question of annexation of any given territory may be submitted to the qualified voters of the City at any time upon the majority vote of the members of the Council. The question of annexation of any given territory may come before the Council for consideration upon either (1) the will of the Council, or (2) the written recommendations of the Zoning and Planning Commission of the City, or (3) petition signed by not less than 1,500 qualified voters of the City. or (4) petition signed by not less than 10% of the qualified voters residing in the territory proposed to be annexed." (Subsections (b) and (c) are not material to this case.)

The cases in which the validity of said ordinances was attacked by the same attorney representing the Plaintiffs here were the cases of John R. Pennington, et al v. City of Corpus Christi, 363 SW 2d 502, and W.L.D. Winship, et al v. City of Corpus Christi, (Case No. 15 of the Court of Civil Appeals for the Thirteenth Judicial District of Texas), ...SW 2d ....., decided December 19, 1963; motion for rehearing overruled January 9, 1964.

The Pennington case was decided by the Court of Civil Appeals, Fourth Supreme Judicial District of Texas, at San Antonio, Texas. Petition for writ of error was refused by the Supreme Court of Texas, and motion for rehearing denied. The plaintiffs in that case appealed to the Supreme Court of the United States, and the Supreme Court of the United States, in Cause No. 621, decided January 13, 1964, dismissed the appeal for want of jurisdiction.

Exactly the same points attacking the validity of the annexation ordinances in the Pennington and Winship cases, are being raised in the present cause.

Plaintiffs claim that for the first time they are raising the question of the constitutionality of the city charter of the City of Corpus Christi relating to annexation.

Reading the opinion in the Winship case, it can be seen that the plaintiffs in that case made the contention that the annexations amounted to a taking of their property without due process of law, in violation of the Constitutions of the State of Texas and the United States, and were void. Certainly the

validity of the city charter provisions of the City of Corpus Christi regarding annexation were under attack at that time.

Be that as it may, a home rule city, such as Corpus Christi, may provide in its charter for any form of annexation, as noted above.

The annexation of lands to a city or town has been held without exception to be purely a political matter, entirely within the power of the Legislature of the State to regulate.

In Hunter v. Pittsburgh, 207 U.S. 161, at pp. 178-179, the Supreme Court of the United States said:

"Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold

it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provisions of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

As stated in 62 C.J.S. at p. 122, "Municipal Corporations", sec. 41:

"Changing such territorial limits is primarily a legislative function, and, subject to such constitutional restrictions as may exist, the legislature has a practically unlimited power to alter the boundaries of a municipal corporation as the public welfare demands, even without the consent of, or notice to, the municipality, its inhabitants, or the inhabitants of the territory affected."

In a very fine article on the annexation of new territory by Texas cities, Truman O'Quinn, in 39 Texas Law Review 172, points out that under our present Texas Constitution and statutes, home rule cities in Texas are unbridled in their method of annexation and their actions thereunder.

Although we may disagree with the mode of annexation or annexations themselves, the remedy of those aggrieved is not in the Courts, but in the State Legislature.

The Plaintiffs in this cause are asking the Court to either enjoin the collection of taxes by the City of Corpus Christi on property annexed by the ordinances under attack, or to impound taxes already collected or to be collected in the future, until a final determination of this cause. This, the Court cannot do.

28 U.S.C., sec. 1341, provides:

"The District Court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the Courts of such State."

The Texas remedies have been held to be completely adequate. Norton v. Cass County, 5th Cir., 115 F. 2d 884; and City of Orange, Texas v. Levingston Shipbuilding Co., 5th Cir.. 1958, 258 F. 2d 240.

Other allegations in Plaintiffs' complaint state that some of them, we would imagine by the application

of building codes, licensing of businesses, etc., have been deprived of their right to follow their business practices. and have therefore been damaged.

There is no diversity of citizenship alleged, and even if existing the amount in controversy is not alleged to be over $10,000.00 so as to give this Court jurisdiction.

Finding no federal question present in this case, and finding, further, that the annexation ordinances under attack here have already been upheld by the State Courts of Texas, the motion of the City of Corpus Christi is hereby granted.

It Is, Therefore, Ordered, Adjudged And Decreed By The Court that this action be and the same is hereby dismissed.

REYNALDO G. GARZA,
(Reynaldo G. Garza),
United States District Judge.

FINAL JUDGMENT.

Filed Feb. 7, 1964.

In the District Court of the United States for the Southern District of Texas, Corpus Christi Division.

Wesley Hammonds, et al,
vs. Civil Action No. 64-C-2.
City of Corpus Christi, Texas.

The motion to dismiss of the Defendant, City of Corpus Christi, Texas, having been granted;

It Is Hereby Ordered, Adjudged And Decreed that the above case be and the same is hereby dismissed.

Signed For Entry at Brownsville, Texas, this 7th day of February, 1964.

REYNALDO G. GARZA,
(Reynaldo G. Garza),
United States District Judge.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21561

WESLEY HAMMONDS, ET AL.,
Appellants,

versus

CITY OF CORPUS CHRISTI, TEXAS,
Appellee.

Appeal from the United States District Court for the Southern District of Texas.

(March 31, 1965.)

Before HUTCHESON, RIVES and JONES, Circuit Judges.

HUTCHESON, Circuit Judge: This is an appeal from a judgment of the United States District Court for the Southern District of Texas, Judge Garza, dismissing appellants' suit.

Appellants, alleging that two annexation ordinances are unconstitutional and void as to them, sought an injunction prohibiting the city from asserting any control over the alleged annexed territory, including, but not limited to, its attempt to collect city taxes.

Urging that the selection of their property for annexation and the exclusion of certain other similar property in the area were arbitrary and not based upon any reasonable classification, appellants insist that the complained of action denies them the equal protection of the laws in that the exercise of municipal authority by the city over the area is an abridgment of the privileges and immunities of the citizens of the area, deprives them of their liberty and property without due process of law, and denies them equal protection of the law in that property of inhabitants in an excluded territory adjacent to the city is exempted from city municipal authority, regulations, and taxes. It is also alleged that the selection of the property to be annexed was designed to favor certain persons by excluding their property so they would not have to pay city taxes on it.

Appellee contends that the annexations were properly proposed by the city council and approved by the voters in elections held in accordance with state law, including the city charter. Some of the complainants have previously attacked the annexations in state court suits, and they were there held valid. *W.L.D. Winship et al v. City of Corpus Christi*, 373 S.W. 2d. 844 (Tex. Civ. App. 1964—error ref'd n.r.e. by Tex Sup. Ct.) (Appeal pending in

U.S. Supreme Court); *Pennington et al v. City of Corpus Christi*, 363 S.W. 2d. 502 (Tex. Civ. App. 1962—error ref'd n.r.e.) (Appeal dismissed by U.S. Supreme Court, 375 U.S. 439). The only limitation under Texas law on the power of a home rule city like appellee to annex additional territory is that the territory shall be adjacent to the city and not included within the boundaries of any other municipality.

The trial judge filed a memorandum opinion,[1] asserting as grounds for his dismissal: (1) the annexation of lands to a city has been held without exception to be purely a political matter, entirely within the power of the State Legislature to regulate; (2) the court has no power to either enjoin the collection of city taxes on the property annexed or to impound taxes already collected because there is a plain, speedy and efficient remedy in the courts of Texas; (3) there is no diversity alleged and the amount in controversy is not alleged to be over $10,000; (4) there is no federal question present; and (5) the annexation ordinances under attack here have already been upheld by the Texas courts.

The appellants rely upon many cases dealing with the protection afforded by the 14th Amendment, but none which specifically relate to an annexation situation. The judge and appellee rely upon *Hunter v. Pittsburgh*, 207 U.S. 161 (1907). Although the judge quoted at length from that opinion, appellants neither cite the case nor make any attempt to distinguish it. The Tenth Circuit, in

[1] Wesley Hammonds et al v. City of Corpus Christi, 226 Fed. Supp. 456.

International Harvester Co. v. Kansas City, 308 F. 2d. 35, also cited with approval and quoted from the *Hunter* case.

We find no error or fault in the opinion and judgment of the district court, and they are AFFIRMED.

UNITED STATES COURT OF APPEALS
For The Fifth Circuit

October Term, 1964

No. 21561

D.C. Docket No. C4-C-2-Civil Action

WESLEY HAMMONDS, ET AL,
Appellants,

versus

CITY OF CORPUS CHRISTI, TEXAS,
Appellee.

Appeal from the United States District Court
for the Southern District of Texas.

Before HUTCHESON, RIVES AND JONES, Circuit Judges.

JUDGMENT

The cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellents, Wesley Hammonds, and others, be condemned, in solido, to pay the costs of this cause in this Court for which enecution may be issued out of the said District Court.

March 31, 1965

Issued as Mandate: May 6, 1965

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21561

WESLEY HAMMONDS, ET AL.,
Appellants

VS.

CITY OF CORPUS CHRISTI, TEXAS,
Appellee

Appeal from the United States District Court for the Southern District of Texas.

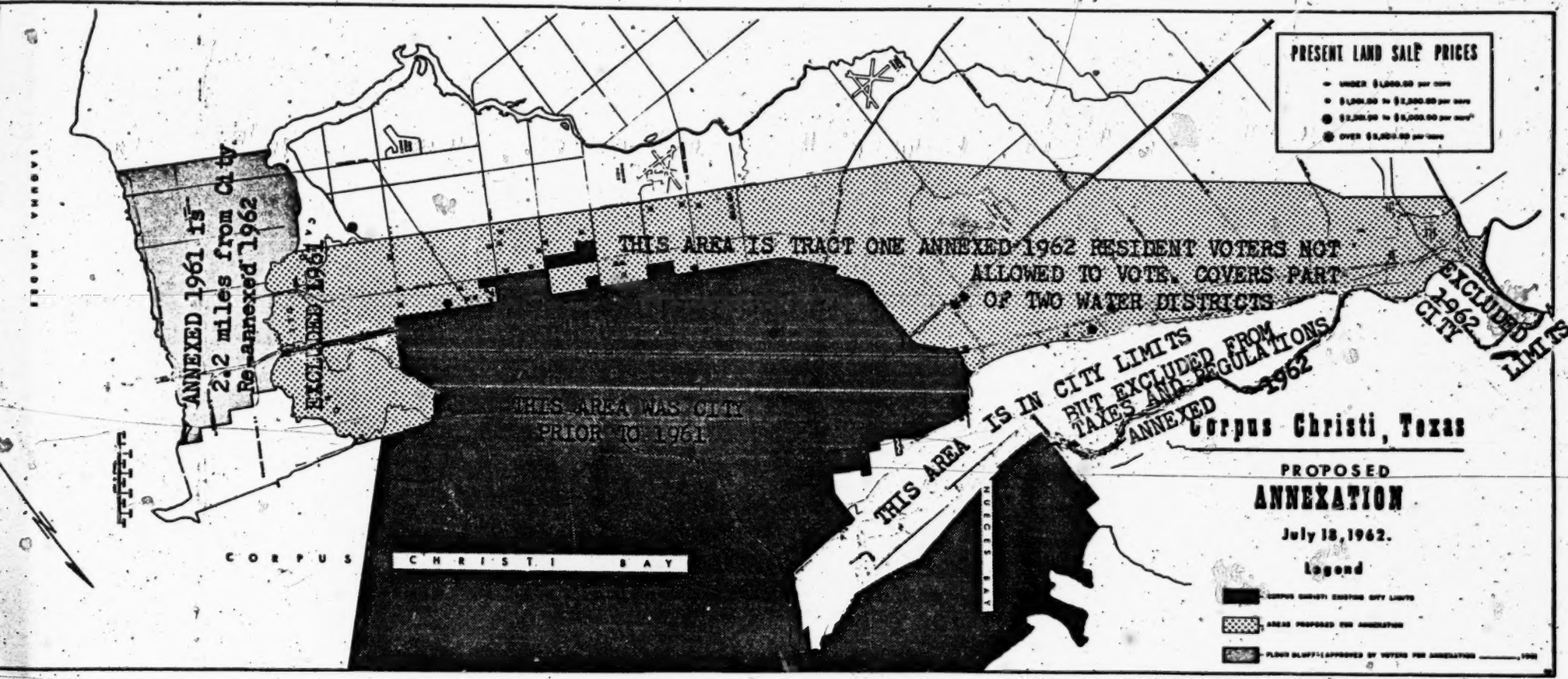
(April 27, 1965)

ON PETITION FOR REHEARING

Before HUTCHESON, RIVES AND JONES, Circuit Judges.

PER CURIAM:

It is ORDERED that the petition for rehearing in the above entitled and numbered cause be, and it is hereby DENIED.


PRESENT LAND SALE PRICES
ANNEXED 1961 is 2.2 miles from City Re-annexed 1962
EXCLUDED 1961
THIS AREA IS TRACT ONE ANNEXED 1962 RESIDENT VOTERS NOT ALLOWED TO VOTE. COVERS PART OF TWO WATER DISTRICTS
THIS AREA WAS CITY PRIOR TO 1961
THIS AREA IS IN CITY LIMITS BUT EXCLUDED FROM TAXES AND REGULATIONS 1962
ANNEXED
EXCLUDED 1962 CITY LIMITS
Corpus Christi, Texas
PROPOSED
ANNEXATION
July 18, 1962.
Legend
CORPUS
CHRISTI BAY
NUECES BAY

Office-Supreme Court, U.S.
FILED
AUG 5 1965
JOHN F. DAVIS, CLERK

No. 370

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

WESLEY HAMMONDS, ET AL.,
Petitioners,

vs.

CITY OF CORPUS CHRISTI, TEXAS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT.

BRIEF IN OPPOSITION—REPLY

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

WESLEY HAMMONDS, ET AL.,
Petitioners,

VS.

CITY OF CORPUS CHRISTI, TEXAS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT.

BRIEF IN OPPOSITION—REPLY

NOW COMES City of Corpus Christi, Respondent, and files this Brief in Opposition and Reply to the Petition for Writ of Certiorari hereby disclosing matters and grounds showing why the cause should not be reviewed by this Court. Petitioners' attorney herein is making his third attempt to get his foot in the door of this Court, concerning the same annexation proceedings which have twice been sustained by the trial and appellate State Courts of Texas, with Writ of Certiorari denied by the United States Supreme Court in both cases. This attorney seeks, by a

method of shifting names of his group who are interested in continuing this type of litigation, to avoid the defense of res judicata. The previous attempts appear as Causes No. 621, of October Term, 1963, and No. 563, of October Term, 1964, of this Court. The last mentioned cause was styled *W. L. D. Winship et al., Appellants,* v. *City of Corpus Christi, Texas, Appellee,* 373 S.W. 2d 844, Writ of Cert. denied ..... U.S. .....; 13 L. Ed. 551. The Appellate Court of Texas made the finding:

> "The suit involves two annexations of territory by the City of Corpus Christi in the years 1961 and 1962. It was instituted against the City by a group claiming to be property owners and taxpayers within the territory sought to be annexed. Another group intervened, claiming to be taxpayers and owners within the former City Limits. Nueces County Water Control and Improvement District #2 also intervened and thereafter Plaintiffs amended, naming Nueces County Fresh Water Supply District #1 as an additional Defendant. All of the said parties, except the City of Corpus Christi, appear herein as appellants, contending that the said annexations are invalid and that the trial judge should not have sustained the motion for summary judgment of the City upholding the same." *W. L. D. Winship et al.* v. *City of Corpus Christi, Texas,* 373 S.W.2d 844 (Civ. App. Ref. n.r.e.).

The Federal Trial Court Judge herein sustained the motion to dismiss of the Respondents (Defendant City in the Trial Court), making the finding:

> "Exactly the same points attacking the validity of the annexation ordinances in the Pennington and Winship cases are being raised in the present case." (Page 40, Petition herein).

Petitioners apparently labor under the misapprehension that they are entitled to relief by this Court upon the facts

alleged in their Petition unless Respondents can point out some law which specifically states that such relief as they request cannot be granted to them. Petitioners, on page 22 of their Petition, recite that:

> "The parties to this suit were not parties to any other suit that is mentioned in the opinions of the Trial Court or Court of Appeals. The issues are not the same as in those cases. The attorney is the same but there is no law forbidding such."

These conclusions of Petitioners are contrary to the finding of the Trial Judge and the Court of Appeals herewith. (Petition page 47).

Petitioners, on page 2 of Petition, mention the fact that Appellant had filed a motion for rehearing and that it was overruled on April 27, 1965, but such petition for rehearing is not a part of the Petition nor an appendix to it. The Judgment of the Court was filed March 31, 1965, and appears on page 50 of the Petition. It is apparently the attempt of Petitioners to obtain a writ of certiorari because of alleged errors in the judgment rather than alleged error in the order denying the petition for rehearing. Said judgment was filed March 31, 1965, more than ninety (90) days prior to the filing of Petition for Writ of Certiorari. No notice of appeal was given by Petitioners. It is respectfully submitted that the Petition was not filed within the time limit of Rule 22, United States Supreme Court Rules.

This action is not a suit in quo warranto. It is an action by separate property owners, unconnected with each other, alleged to be the owners of various pieces of property scattered throughout an area which was annexed to the City of Corpus Christi in the course of two annexation proceedings which have already been the sub-

ject of the above mentioned two lawsuits. The contention of Petitioners is as set forth on page 8 of their Petition herein that "there was no due process of law in said annexation". Petitioners' statement regarding the allegations of their complaint in the Trial Court shows that those allegations are very general and somewhat conflicting.

On page 12 of their Petition, it is alleged that the annexations, do not comply with a City Charter, a State Statute and a State Constitution. These allegations have been twice buried by the Texas Courts which have uniformly held that the subject annexation proceedings were in all things proper and the annexations are valid. However, on page 6 of the Petition, Petitioners' attorney, and some of the same individuals involved in the previous cases, are now attempting to exhume the same case by clothing it in a general allegation that the City Charter and annexation ordinances are unconstitutionl. The foregoing allegations are not only vague, they are contradictory as well. If Respondent failed to follow statutory and charter mandates, the question of their constitutionality is not reached. If Petitioners bottom their case on the unconstitutionality of the Charter, State Statutes and State Constitution, they must first admit that Respondent complied with them. Petitioners' reluctance to take either of the two positions has resulted in a failure to take any effective position at all.

Certainly such a situation comes within the language of Mr. Justice Black in his statement of the decision of the Court in *Bell* v. *Hood* in part quoted by Petitioners. The quotation appearing on pages 19 and 20 of Petition herein is followed by the Statement of Justice Black:

> "The previously carved out exceptions are that a suit may sometimes be dismissed for want of jurisdiction

> where the alleged claim under the constitution or Federal Statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Bell* v. *Hood,* 327 U.S. 678 at 682, 90 L. Ed. 943.

Petitioners make no allegations that the annexations are not and will not be beneficial to them. Only general statements of discrimination appear. Petitioners nowhere allege that the City of Corpus Christi, or its officers or employees railroaded the annexation proceedings through for any unlawful purpose of taxing the Petitioners' property or to deprive them of a livelihood, or to take away some previously existing civil or political right. Yet the decision in *Gomillion* v. *Lightfoot,* 364 U.S. 339, is specifically based on such an allegation, which there was uncontroverted. Petitioners here complain about annexation having incidentally resulted in inequality in taxation. While the *Gomillion* v. *Lightfoot,* 364 U.S. 339, case does distinguish the case of *Hunter* v. *Pittsburgh,* 207 U.S. 161, cited by the Trial Court and Circuit Court of Appeals herein, said Gomillion Opinion on page 343 says:

> ". . . If one principle clearly emerges from the numerous decisions of this Court dealing with taxation it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers."

Petitioners fail to show any basis for Federal jurisdiction over their claim for relief under the facts involved in this case. The *Gomillion* case was a deliberate attempt to deprive citizens of an existing right by the exercise of a corporate power while here no rights are alleged to be taken away and no motive to do so is alleged to exist.

Hunter v. *City of Pittsburgh*, 207 U.S. 161, should be controlling.

CONCLUSION AND PRAYER

In its simplest form the Petitioners, or at least the attorney for Petitioners and some of the Petitioners, are attempting for the third time to invoke the jurisdiction of this Supreme Court of the United States concerning the validity of said annexation proceedings of the City of Corpus Christi on the grounds that said annexation did not comply with the concept of due process of law as set forth in the Constitution of the United States as interpreted by the Courts. This is attempted to be established by ignoring the many decisions specifically ruling that the Federal Court has no jurisdiction of such a proceeding, and by seizing upon many isolated statements contained in Court Opinions which have nothing to do with annexation proceedings, taxation questions and other incidental questions raised by Petitioners. Annexation proceedings have never been a matter within the jurisdiction of the Federal Courts. The opinion of the Trial Court and the opinion of the Circuit Court cite ample authority on this point. Writ of certiorari was denied by this Supreme Court on a very definite statement of facts exceedingly positive on the nature of injury which would result by such annexation in the recent case of *Pan American Production Co.* v. *Texas City*, 303 S.W.2d 780 (Tex. Sup. Ct., 1957), Appeal Dismissed 355 U.S. 603.

This was not a hasty Council decision nor a political maneuver to deprive anyone of any property or privileges but an invocation of the democratic method of submitting the issue of annexation to an election by the voters resident in the City. The incidental tax questions are solely questions for the State Courts which have jurisdiction to

render adequate remedies. *City of Orange, Texas*, v. *Livingston Shipbuilding Co.*, 5th Circuit Ct., 1958, 258 F.2d 240. As was stated at the outset above the Petition is merely a succession of general statements as to the legal basis for relief requested by Petitioners and we bow to the wisdom of the Court for the 5th Circuit in discerning the points at issue. The disposition of such points against the contentions of Petitioners are correct and Writ of Certiorari should be denied.

Respectfully submitted,

I. M. SINGER
City Attorney
City of Corpus Christi
City Hall
Corpus Christi, Texas
Attorney for Respondent

ROBERT E. YOUNG
Corpus Christi, Texas
Of Counsel

CERTIFICATE

I, I. M. Singer, a member of the Bar of the Supreme Court of the United States, representing the Respondent herein, do hereby certify that this Brief in Opposition—Reply has been served upon Petitioners by depositing copies thereof in the United States mail in Corpus Christi, Texas, with first-class postage prepaid, to Sidney P. Chandler, P. O. Box 6216, Corpus Christi, Texas, counsel of record for Petitioners, this the 4 day of August, 1965.

I. M. SINGER